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Letter dated 2 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/589).

The Counter-Terrorism Committee has received the attached third report from Switzerland submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 12 September 2003 from the Permanent Representative of Switzerland to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

With reference to your letter of 9 May 2003, I have the honour to transmit to you herewith my Government's replies to the questions from the Counter-Terrorism Committee concerning the first supplementary Swiss report of 11 July 2002 (see enclosure).

(*Signed*) Jenö C. A. **Staehelin**
Ambassador

Enclosure

Report on counter-terrorism of 19 December 2001 submitted by Switzerland to the Security Council Committee established pursuant to resolution 1373 (2001)

Replies to the questions from the Committee concerning the first Swiss supplementary report of 11 July 2002

Second supplementary report

In italics: extracts from the letter of 9 May 2003 from the Chairman of the Counter-Terrorism Committee (CTC)

1. Implementation measures

1.1 *The CTC has agreed on further questions and comments for the consideration of the Government of Switzerland with regard to the implementation of the resolution, as set out in this section.*

Regarding the criminalization of terrorist financing and the prosecution of offenders

1.2 *Please confirm that the existing or proposed provisions in the Penal Code criminalize the use of Swiss territory by anybody for the purpose of:*

- *Committing a terrorist act against another State or its citizens; or*
- *Financing, planning and facilitating terrorist acts against other States or their citizens, even if no related terrorist acts have actually been committed or attempted.*

Article 260 bis of the current Swiss Penal Code (PC) provides for a penalty of up to five years' imprisonment for the preparation, according to a plan, of certain grave offences. These offences, which include murder, assassination, serious personal injury, armed robbery, kidnapping or abduction, hostage-taking, arson and genocide, are often committed in a terrorist context.

Article 260 ter PC provides for a penalty of up to five years' imprisonment for membership or support of an organization whose purpose is to commit violent criminal acts or procure funds by criminal means. Terrorist organizations seeking to commit violent criminal acts against property or persons fall within the scope of this provision.

The new article 260 quinquies PC, which was adopted by Parliament on 21 March 2003 and will enter into force on 1 October 2003, provides for a penalty of up to five years' imprisonment for anyone who collects funds or makes them available with the intention of financing a violent criminal act aimed at intimidating a group of people or at forcing a State or international organization to carry out or refrain from carrying out any act.

In Switzerland, the preparation of a terrorist offence, membership or support of a terrorist organization and financing of acts of terrorism are, in all cases, punishable offences in themselves, even if no terrorist act has yet been committed or

attempted. The acts of the persons involved are thus punishable whether they are planned or prepared on Swiss territory, on the territory of another State, or against foreign nationals.

1.3 *Please explain whether, in order to fulfil the requirements of subparagraph 2 (e), it is possible under Swiss law to prosecute or extradite a foreign national who is found in Switzerland and is alleged to have committed a terrorist act outside Switzerland against another State or its citizens.*

Criminal prosecution

Under article 6 bis PC, a foreign national may be sentenced in Switzerland for an offence committed abroad:

- If the offence in question is one that Switzerland, under an international treaty, has undertaken to prosecute;
- If the act is also punishable in the State where it has been committed;
- If the perpetrator of the offence is in Switzerland; and
- If the perpetrator has not been extradited from Switzerland.

Switzerland has already ratified 10 of the United Nations conventions against terrorism. In the autumn of this year, it will accede to the International Convention for the Suppression of Terrorist Bombings and will ratify the International Convention for the Suppression of the Financing of Terrorism. Switzerland is thus in a position to prosecute on its territory any terrorist acts committed abroad and listed in paragraph 2 (e) of the resolution, provided that the above-mentioned conditions have been met.

Under the new article 7 PC, which was adopted by Parliament on 13 December 2002 and will enter into force in 2005, and in the absence of an international treaty (first of the four above-mentioned conditions), a foreign national may also be sentenced in Switzerland for an offence committed abroad in the case of a particularly serious crime prohibited by international law.

Extradition

The financing, planning, preparation or execution of terrorist acts, and support provided for such acts, constitute serious offences which are punishable in Switzerland by several years' imprisonment. With a view to extradition, the dual criminality requirement is thus met. If Switzerland refuses to extradite a foreign national for a terrorist act committed abroad against another foreigner (for example, because the perpetrator, in the State to which he or she would be extradited, would incur the death penalty or might suffer inhuman treatment), Switzerland may itself undertake to prosecute the offender, on the basis of article 6 bis PC.

1.4 *As regards the definition of a terrorist act and anti-terrorism policy, the CTC noted that, in replying to subparagraph 2 (e) in its second report, Switzerland indicated that its answer was dependent on the adoption of new legislation in relation to terrorism and the financing of terrorism. The CTC would be grateful if Switzerland could provide it with the information which it previously requested in that respect.*

In Swiss law, there are many penal norms applicable to terrorist acts and their financing (see annex 1 to the first report of Switzerland, of 19 December 2001, for a list of these offences). In Switzerland, acts of violence committed as part of a terrorist plot have long been punishable by heavy prison sentences, which may extend to life imprisonment. Particularly severe penalties are provided in cases where a criminal offence endangers the life and physical integrity of a number of persons or causes major damage. These grounds for increasing the penalty have been intended precisely to cover terrorist acts, even though the Penal Code does not specifically define a terrorist offence.

In 2002, the Swiss Government submitted to Parliament a general law on terrorism in order to enhance the visibility of its efforts to fight terrorism. This new law was not intended to criminalize any new forms of behaviour, but rather to increase and unify the existing penalties for violent offences committed in a terrorist context. Parliament refused, however, to incorporate this general law on terrorism into the Penal Code because it considered that the penalties provided in Swiss law for the punishment of violent offences (particularly when committed for terrorist purposes) were already severe enough.

Swiss anti-terrorism policy is not in the least hindered by the absence of a law in the Penal Code expressly defining a terrorist act. Indeed, as we have explained above, offences committed in a terrorist context are already subject to severe penalties. Moreover, owing to the circumstances of their adoption and formulation, articles 260 bis PC (criminality of preparatory acts) and 260 ter PC (criminality of membership or support of a criminal organization) are intended to apply to offences perpetrated in a terrorist context. These provisions allow for the institution of criminal proceedings even before a terrorist act has been committed; they also make it possible to target the individual members and supporters of a terrorist organization.

Article 260 quinquies PC, which was adopted by Parliament on 21 March 2003 and will take effect on 1 October 2003, explicitly defines the offence of terrorist financing (this article is reproduced in the annex to the present report). This law supplements, among others, article 260 ter PC (on criminal organizations) by making the financing of isolated individuals or loosely structured groups a fully-fledged offence, punishable even if no terrorist act has yet been committed or attempted.

1.5 *In responding to paragraph 3 (g), in its second report, Switzerland set out a number of measures which it intended taking in 2002 to fight terrorism more effectively. The CTC would be grateful for a progress report on the enactment and implementation of the relevant draft laws, in particular those concerning the special recommendations which FATF has drawn up in relation to the financing of terrorism.*

On 12 March 2003, the Swiss Parliament approved Switzerland's accession to the International Convention for the Suppression of Terrorist Bombings. The actual accession is scheduled to take place at the end of September 2003. Also on 12 March 2003, the Swiss Parliament gave its approval for the ratification of the International Convention for the Suppression of the Financing of Terrorism. Ratification will take place at the end of September 2003. In addition, 1 October 2003 marks the entry into force of the new laws suppressing the financing of terrorism and establishing the criminal responsibility of legal persons for the

financing of terrorism (and for other offences). Please see the annex to this report for the text of these provisions. Furthermore, these Swiss laws comply with the regulations of the Financial Action Task Force on Money Laundering (FATF) aimed at strengthening the fight against the financing of terrorism.

Regarding the protection of the economic and financial system

1.6 *Effective implementation of paragraph 1 of the resolution requires that financial institutions and other intermediaries (for example, lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) should be under a legal obligation to report suspicious transactions. It is not clear from the reports whether the obligation extends beyond designated persons within the traditional financial sector. Could Switzerland please confirm whether such is in fact the case?*

The Federal Act on the Prevention of Money-Laundering in the Financial Sector, or Anti-Money-Laundering Act (AMLA) (www.admin.ch/ch/f/rs/c955_0.html), subjects all financial intermediaries to a reporting obligation. For the non-banking sector, the Act contains a general clause under which persons who, on a professional basis, accept, keep on deposit or help invest or transfer assets belonging to third parties are also deemed to be financial intermediaries. As an example of this general clause, the Act contains a non-exhaustive list of covered activities clearly related to the financial sector. The title of the Act and the explanatory report thereon indicate that the legislature wished to limit its scope of application to the financial sector, a notion which is not defined in the Act. At the time when consideration is given to the applicability of AMLA, it will be determined whether or not the activity in question comes under the financial sector. In order to interpret the definition of "financial sector", special reference should be made to the types of examples included in the above-mentioned list and, where there is need for further clarification, to the existing international lists concerning activities carried out in the financial sector (e.g., annex I of guidelines 2000/12/EG, annex to FATF Recommendation 9). The following example should make this clear: A lawyer who is not active in the traditional financial sector may nonetheless, in addition to providing legal and advisory services, manage his customers' assets. In such a case, he or she is subject to AMLA if this asset management is practised on a professional basis in the sense of the Money-Laundering Control Authority Ordinance of 20 August 2002 concerning financial intermediation activities carried out in the non-banking sector on a professional basis (OAP-LBA, www.admin.ch/ch/f/rs/c955_20.html).

1.7 *Please also confirm whether the obligation referred to immediately above relates only to suspected money-laundering activities and does not extend to transactions, particularly those involving funds which are legal in origin but are suspect for other reasons, such as the unusual character of an individual transaction. (For example a transaction might be deemed to be unusual in character, by virtue of the amount involved, the identity of the parties or because it revealed an unusual pattern of transactions.) The CTC would appreciate receiving further information from Switzerland concerning the legislation which is already in place, or which it proposes introducing in order to deal with this aspect of the resolution.*

The chief purpose of the reporting obligation under the AMLA and the right to report established by article 305 ter of the Penal Code (PC) is to combat money-

laundering by identifying the beneficial owner, freezing assets and informing the competent authorities of any suspicion that assets might have been derived from a crime. Save in the fight against the financing of terrorism, the primary aim of this mechanism is not to identify funds which are lawful in origin but suspect for other reasons. Nonetheless, as the Federal Banking Commission made clear in its Anti-Money-Laundering Ordinance (OBA-CFB) of 18 December 2002, which entered into force on 1 July 2003, "when the clarification of the economic background to unusual transactions reveals a connection with a terrorist organization, the financial intermediary shall forthwith notify the Money Laundering Reporting Office" (article 25). Such notification must take place irrespective of whether or not the funds deposited with the financial intermediary are lawful in origin. This reporting obligation applies whenever there is any information indicating the existence of a direct or indirect connection between a transaction or a business relationship and a terrorist organization. Such a case would arise, for example, when the name of one of the persons involved in a business relationship is included on the lists of alleged terrorists that are issued by the authorities.

1.8 *As regards the reporting obligation, the CTC has noted that no convictions that have been secured in Switzerland for failing to report suspicious transactions and that a maximum fine of 200,000 Swiss francs may be imposed. The CTC would appreciate receiving more details on the operation of the reporting machinery. In particular, the CTC would appreciate learning the number of suspicious transactions which have been reported to the Swiss Financial Intelligence Unit in recent years. How many transfers have in fact been frozen by the banks after they have expressed doubts in relation to certain transactions?*

Under article 10 of the AMLA, a financial intermediary is obliged to freeze assets without giving notice to the beneficial owner when reporting suspected laundering of money stemming from a criminal activity, such as a terrorism-related activity, to the Money-Laundering Reporting Office (managed by the Federal Police Office). The account must remain frozen for five days as from the date of notification. After five days, the freeze is lifted unless the Reporting Office refers the case to the prosecuting authorities. The latter may order a judicial freezing of the account. All notifications concerning cases linked to the attacks of 11 September 2001 have been transmitted to the criminal prosecuting authority (Office of the Public Prosecutor of the Confederation). The following table covering the years 2001 and 2002 shows the number of reported cases where there are suspected links with the financing of terrorism and the total amount of funds which have been frozen in consequence thereof.

Annual statistics of the Money-Laundering Reporting Office of Switzerland (MROS)	*2001*	*2002*
Total number of suspicious money transactions reported to MROS	417	652
Reports related to the financing of terrorism	95	15
(% of total)	22.8%	2.3%
Reports received from the banking sector	34%	66%
Amounts in Swiss francs frozen by the financial intermediary at the time of reporting	SwF 37 million	SwF 1.6 million

1.9 *As regards identifying economic ownership, it would appear that the principal regulatory body is the Swiss Bankers Association. The Association has imposed some 53 penalties over the last three years. Could you indicate the amounts of the fines involved? Have any of these decisions been appealed? Could you outline the methodology adopted by the Swiss Bankers Association? Specifically, could you identify the parties who are empowered to request an investigation? How are decisions taken in the investigative process? Do the investigators work permanently or temporarily for the Association? How is their independence guaranteed? Has the Supervisory Board of the Association a controlling interest in this process?*

We are able to provide you with the following information about the penalties machinery of the Code of Conduct with regard to the exercise of due diligence (CDB 98) (http://www.swissbanking.org/fr/110f.pdf) and, more specifically, in respect of the questions concerning the 53 penalties imposed in the period between 1998 and 2001 by the Supervisory Board: 31 fines of over SwF 10,000 were imposed as part of the 53 penalties ordered in 61 cases. The largest fine amounted to SwF 500,000. Only one case has been the subject of an appeal to the arbitration tribunal provided for by article 13 of CDB 98. The methodology applied by the Supervisory Board is that of causal responsibility. This means that, irrespective of the bank's conduct (intention, negligence or "accident"), any violation of one of the provisions of CDB 98 is punishable. Anyone, including State authorities, may submit a denunciation to the Supervisory Board. Membership, independence and procedure before the Supervisory Board are governed by article 12 of the CDB, which is reproduced below.

Article 12 Supervisory Board, investigators

1. The Swiss Bankers Association sets up a Supervisory Board composed of five independent experts, with a view to investigating and penalizing violations under this agreement. The Supervisory Board appoints a secretary and regulates his or her responsibilities.

2. The Swiss Bankers Association appoints one or more investigators. The investigators may recommend to the Supervisory Board that proceedings be opened and sanctions imposed or that the investigation be terminated. When requesting information from a bank, the investigators have to inform the bank of the capacity in which it is involved in the proceeding.

3. The members of the Supervisory Board and the investigators are appointed for a term of five years, and may be reappointed.

4. If the Supervisory Board finds that the agreement has been violated, it imposes an equitable sanction upon the culpable bank, in accordance with article 11 above.

5. The Supervisory Board establishes the rules of procedure and determines the allocation of costs.

6. If the culpable bank abides by the decision of the Supervisory Board, the proceeding is closed. Otherwise article 13 applies.

7. If a bank refuses to participate in the investigation conducted by the Supervisory Board or by the investigators, the Supervisory Board may impose a fine pursuant to article 11.

8. As authorized officers under the terms of article 47 of the Banking Act, the members of the Supervisory Board, the secretary and the investigators are strictly bound to treat as confidential the facts about which they gain knowledge in the course of the proceeding. The banks may not invoke banking confidentiality vis-à-vis the Supervisory Board or the investigators.

9. The Supervisory Board informs the Federal Banking Commission of its decisions. If it determines that abuses have been committed by persons subject to professional confidentiality, the Supervisory Board may also advise the appropriate disciplinary authority thereof.

Regarding international cooperation

1.10 *The CTC would be grateful for a further progress report on the enactment and implementation in Swiss legislation of the two international instruments recently ratified by Switzerland and referred to in its second report*:

- *The International Convention for the Suppression of the Financing of Terrorism;*
- *The International Convention for the Suppression of Terrorist Bombings.*

Do these new measures impose specific obligations on the Swiss financial sector?

As Switzerland indicated in its second report of 11 July 2002 (in respect of paragraph 3 (c) of the resolution), on 26 June 2002, the Swiss Government submitted an explanatory report to Parliament on the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Terrorist Bombings, and on a revision of the Swiss Penal Code. Parliament dealt with this explanatory report and the draft laws it contained under ordinary procedure. On 12 March 2003, Parliament approved accession to the International Convention for the Suppression of Terrorist Bombings and authorized ratification of the International Convention for the Suppression of the Financing of Terrorism. On 21 March 2003, Parliament further adopted the legislative amendments required for the implementation of the International Convention for the Suppression of the Financing of Terrorism (thus making the financing of terrorism a punishable offence and establishing the criminal liability of legal persons). The implementation of the International Convention for the Suppression of Terrorist Bombings does not, on the other hand, call for any legislative amendment. No request has been made for an optional referendum (provided for by the Constitution when federal laws are revised). Switzerland is therefore scheduled to ratify these two conventions at the end of September 2003 to coincide with the general debate of the fifty-eighth session of the United Nations General Assembly. The revised laws will come into force on 1 October 2003.

The International Convention for the Suppression of the Financing of Terrorism does not impose any fresh obligations on the Swiss banking sector. For some time, Swiss law has already been fulfilling the requirements of the Convention, especially those of article 18. This is particularly true of the obligation placed on financial intermediaries by the Anti-Money-Laundering Act (AMLA) to clarify the economic background and the purpose of a transaction or business relationship, when either appears to be unusual, or if there is reason to suspect that assets are the proceeds of a crime or that a criminal organization (including terrorist

organizations) has power of disposal over them. If an investigation produces a well-founded suspicion, this suspicion must be reported. A financial intermediary which knows or presumes, on the basis of a well-founded suspicion, that assets involved in a business relationship are related to a money-laundering offence under article 305 bis of the Swiss Penal Code, that they are the proceeds of a crime, or that a criminal or terrorist organization has a right of disposal over them must without delay notify the Money-Laundering Reporting Office (MROS) thereof. It must also immediately freeze all assets which are connected with the information that has been reported. It must continue to freeze the assets until receipt of a decision by the competent prosecuting authority, but for a maximum of five working days (for more details on this procedure, please see the sections of the second Swiss report, of 11 July 2002, concerning paragraphs 1 (b) and (c) of the resolution). The new offence of "financing terrorism" (article 260 quinquies PC) will be criminalized and will therefore constitute an act giving rise to the obligations described above (reporting obligation and freezing of assets). It must also be emphasized that the norm regarding the financing of terrorism introduced by article 260 quinquies PC makes such action obligatory even when the financial operation is, in itself, perfectly legal, or when the assets in question are legal in origin (in this connection, please see the detailed explanations in section 1.7 of this report).

1.11 *Switzerland specified in its report (at page 13) that it intends to ratify, as soon as possible, the United Nations Convention against Transnational Organized Crime. Did it proceed to ratification and, if so, what effect has its ratification had on its domestic legislation*?

Switzerland intends to ratify the United Nations Convention against Transnational Organized Crime as soon as compliance with constitutional procedure allows. This autumn the Swiss Government must adopt an explanatory report about the ratification of this convention. In accordance with the law, this report will then be submitted to the cantons and interested circles, which will have three months to express their opinion. Parliament will then look into the question of ratifying this convention, which does not necessitate any amendments to Swiss law.

1.12 *Could Switzerland indicate whether it envisages simplifying and/or unifying the several procedures which currently exist for appealing a request for judicial assistance*?

The appeal procedures provided by Swiss law on international judicial assistance were already simplified in 1997 by legislative revision (removal of one appeal channel). There are also plans to do away with cantonal appeal courts in general as part of the project to completely revise the federal judicial system. Under the draft law to be submitted to Parliament, decisions on international judicial assistance will be subject to appeal to just one court, the Federal Administrative Court.

2. Assistance and guidance

2.1 *The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the resolution. The Committee would encourage Switzerland to let it know if there are areas in which assistance or advice might be of benefit to Switzerland in its implementation of the resolution or of any areas in which Switzerland might be in a position to offer assistance or advice to other States on the implementation of the resolution.*

2.2 *The CTC maintains a Directory of Information and Sources of Assistance in the field of Counter-Terrorism in which all relevant information on available assistance is posted. It can be found on the CTC's web site (www.un.org/sc/ctc). The CTC's Technical Assistance Team is available to discuss any aspect of the provision of assistance and can be contacted as in paragraph 3.1 below.*

2.3 *If the Government of Switzerland feels that it could benefit from discussing aspects of the implementation of the resolution with the CTC's experts, it is welcome to contact them as mentioned in paragraph 3.1 below.*

2.4 *The CTC notes that there is no mention in the reports submitted by Switzerland of areas where it might be able to provide assistance to other States in connection with the implementation of the resolution.*

The Government of Switzerland is fully aware of the importance of strengthening international cooperation in order to combat terrorism and its financing effectively. With regard to requests for assistance related to stage A, as defined in resolution 1373 (2001) (legislation to combat terrorism and its financing; the State's internal procedures for becoming a party as soon as possible to the 12 international conventions and protocols relating to terrorism; legislation and measures to combat the financing of terrorism), the following points should be made with regard to Switzerland's international commitment:

1. Switzerland is a very active participant in the numerous tasks and actions undertaken in this area not only within the United Nations but also in other international forums such as the Organisation for Economic Cooperation and Development (OECD), the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the Euro-Atlantic Partnership Council (EAPC) and the Financial Action Task Force on Money Laundering (FATF). Switzerland also participates in the Counter-Terrorism Action Group (CTAG) set up at the G-8 summit in Evian;

2. Together with the United Kingdom, Canada, the Netherlands, the World Bank and the International Monetary Fund, Switzerland is a founder member of the FIRST initiative (the Financial Sector Reform and Strengthening Initiative). FIRST is aimed at promoting healthy and robust financial systems in developing countries and countries with economies in transition by financing and implementing technical assistance projects in the areas of regulation, supervision and development of the financial sector. Switzerland's contribution to the FIRST initiative, which was officially launched in April 2002, amounts to SwF 14 million over a period of four years.

In this context, Switzerland has so far approved two regional projects designed to combat money-laundering and the financing of terrorism and has, of course, helped finance these projects, which are:

- A three-day regional workshop coordinated by the Financial Action Task Force of South America (GAFISUD) in Uruguay, which was aimed at supporting the application of international standards on combating money-laundering and the financing of terrorism and at increasing the effectiveness of cooperation between national agencies that are members of GAFISUD. The following countries were represented at the workshop: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela;

- A three-day international conference entitled the "ECA [Europe and Central Asia] Conference on Anti-Money-Laundering" (Moscow, December 2002), which brought together 21 countries from Europe and Central Asia with the aim of allowing international experts to learn about the experiences of financial intelligence units, setting priorities for technical assistance and developing measures and the necessary skills to combat money-laundering and the financing of terrorism;

3. In the coming months, Switzerland intends to clarify and upgrade its profile and activity in the field of technical assistance. Concrete projects for technical cooperation, at both the bilateral and multilateral levels, are currently under consideration. Accordingly, Switzerland has decided to organize, within the framework of the EAPC, a workshop on the problems of combating terrorism and its financing. This event, which will be held in late 2003 in Geneva, will focus primarily on the following regions: south-eastern Europe, the Caucasus and Central Asia. The Swiss Government will ensure that the Chairman of the CTC is kept fully informed on the progress and outcome of this project and on all other action it takes in the field of technical assistance;

4. Finally, it should be stressed that for a long time Switzerland has made combating poverty and exclusion a priority in its development cooperation activities. Its development programmes focus on helping the very poorest people in the poorest regions, encouraging local initiatives and making allowance for different sociocultural environments, and are intended, among other things, to strengthen good governance and the rule of law. By tackling poverty systematically in its development cooperation activities, Switzerland is trying to combat in a sustainable manner several of the many causes of terrorism.

2.5 *At this stage of its work, the CTC will focus on requests for assistance that relate to "stage A" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the resolution is a matter for agreement between them. The CTC would be grateful to be kept informed of any such arrangements and on their outcome.*

Activities related to stage B (strengthening the operational measures for combating terrorism with a view to implementing resolution 1373 (2001), including by establishing adequate police, intelligence, immigration and border control services) and stage C (exchange of information and judicial cooperation, establishing the link between terrorism and other threats to security such as arms-trafficking, drugs, organized crime and money-laundering, as well as the illegal transfer of arms (A, B and C)):

As noted above, Switzerland is an active participant in the work of the Financial Action Task Force on Money Laundering (FATF) aimed at combating the financing of terrorism more effectively. The Swiss Money-Laundering Reporting Office is in touch with several countries' financial intelligence units with a view to providing them with the necessary technical assistance during the process of establishing such services. This cooperation is provided either at the bilateral level or within the multilateral framework of the Egmont Group. Generally speaking, the judicial, police and intelligence authorities cooperate closely with their foreign counterparts not only on specific cases but also in exchanging advice and information related to combating terrorism and its financing.

Switzerland also subscribes to international agreements intended to encourage the destruction of chemical weapons and thereby prevent their proliferation and use for terrorist ends. In this context, in March 2003 the Swiss parliament decided to make available a framework credit of SwF 17 million over a period of five years to finance chemical disarmament projects, mainly in the Russian Federation. It should also be pointed out that Switzerland recently joined the G8 Global Partnership against the Spread of Weapons and Materials of Mass Destruction.

In the area of the management and safety of stocks of small arms and/or light weapons, Switzerland has developed, jointly with Finland, a project to provide assistance in the form of technical expertise. For the moment, this offer has been proposed within the framework of the OSCE to three countries in the southern Caucasus (Georgia, Armenia and Azerbaijan). Switzerland has also started a similar project within the framework of the EAPC. This project involves making available, at a country's request, international experts in weapons collection, management and destruction. This initiative is intended to help countries develop national programmes in this area.

In south-eastern Europe, Switzerland is an active partner in several initiatives to strengthen internal security (combating organized crime, human trafficking and corruption). Thus, since 1993 members of various cantonal or municipal police forces and Swiss border guards have been regularly put at the disposal of the United Nations in the former Yugoslavia (as Civilian Police Monitors, or CIVPOL). Currently, four such monitors are working in Bosnia and Herzegovina and 11 more are on mission in Kosovo.

Lastly, within the EAPC, Switzerland is working with the United Kingdom on a project to provide support in the area of border security in south-eastern Europe. The Geneva Centre for the Democratic Control of Armed Forces is very active in this sector. The transfer of border security forces to civilian control — following the dismantling of their military structures — is intended to increase the effectiveness of the campaign against organized crime and illegal trafficking in arms, drugs and human beings.

Annex

New provisions of the Swiss Penal Code that are applicable to the financing of terrorism and the liability of legal persons (entry into force: 1 October 2003)

Article 260 quinquies (Financing of terrorism)

1. Anyone who collects or provides funds with the intention of financing a violent criminal act aimed at intimidating a group of people or forcing a State or international organization to carry out or refrain from carrying out any act shall be punished with a maximum of five years' rigorous or ordinary imprisonment.

2. If the person concerned has merely accepted the possibility that the funds in question may be used to finance a terrorist act, he or she shall not be punishable under this provision.

3. The act is not considered as financing terrorism if it is intended to install or restore a democratic regime or a State governed by the rule of law, or to allow human rights to be exercised or safeguarded.

4. Paragraph 1 does not apply if the funding is intended to support acts that are not contrary to the rules of international law applicable in cases of armed conflict.

Article 100 quater (Criminal liability of companies)

1. A crime or offence committed within a company in the course of business activities that are in conformity with its aims is attributed to the company if it cannot be attributed to a specific natural person owing to the company's lack of organization. In this case, the company shall be punished with a maximum fine of SwF 5 million.

2. In the event of a violation provided for in articles 260 ter, 260 quinquies, 305 bis, 322 ter, 322 quinquies or 322 septies, the company shall be punished regardless of the criminal liability of natural persons if it is responsible for not taking all reasonable and necessary organizational measures to prevent such a violation.

3. The judge shall set the fine according to, in particular, the seriousness of the violation, the lack of organization and the harm caused, and according to the company's financial capacity.

4. The following are deemed to be companies within the meaning of this article:

(a) Legal persons under private law;

(b) Legal persons under public law, except for territorial corporate bodies;

(c) Firms;

(d) Sole traders.

Article 100 quinquies (Criminal proceedings)

1. If criminal proceedings are taken out against the company, the latter shall be represented by one person only, who must be authorized to represent the company in civil matters without any restrictions. If the company does not appoint a representative within a reasonable period of time, the investigating authority or the judge shall appoint one of the persons entitled to represent the company in civil matters to represent it in the criminal proceedings.

2. The person representing the company in the criminal proceedings has the same rights and obligations as a defendant. The other representatives referred to in paragraph 1 are under no obligation to testify in court.

3. If a criminal investigation is opened into the person representing the company in the criminal proceedings for the same acts or on related acts, the company shall appoint another representative. If need be, the investigating authority or the judge shall appoint another representative in accordance with paragraph 1 or, failing that, a qualified third party.